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No. 10-671

IN THE
Supreme Court of the United States

WINE COUNTRY GIFT BASKETS.COM,
K&L WINE MERCHANTS, BEVERAGES & MORE, INC.,
DAVID L. TAPP, RONALD L. PARRISH,
JEFFREY R. DAVIS,

Petitioners,

v.

JOHN T. STEEN, JR., GAIL MADDEN, JOSE CUEVAS, JR.,
ALLEN STEEN, GLAZER'S WHOLESALE DRUG CO., INC.,
REPUBLIC BEVERAGE CO.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF *AMICUS CURIAE* OF THE SPECIALTY WINE RETAILERS OF AMERICA IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF INTEREST

Amicus Specialty Wine Retailers Association is a nonprofit trade association that represents the interests of specialty wine retailers and the consumers they serve across the United States.[1] Its membership includes classic brick-and-mortar-wine merchants, Internet-based wine retailers, wine cataloguers, auction retailers, mass-market merchants, and wine lovers who support and patronize these respective types of sellers. *Amicus*' view, advanced through litigation and lobbying, is that the national market for wines should be truly national in scope and operation – in particular, that the selection of wines available to consumers in a given state should be no less rich and expansive than the full panoply of wines available around the country.

As the Internet increasingly transcends geographic boundaries and as American consumers' wine appreciation and sophistication grow as never before, fine wines are available from specialty retailers in unprecedented quality and breadth. *Amicus*' interest in this case is to see the channels of interstate commerce freed of discriminatory barriers such as the law challenged in this case, so that oenophiles in Texas and other states have full access

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[1] No party or counsel for a party authored or contributed monetarily to the preparation or submission of any portion of this brief. Counsel of record for all parties received notice of Specialty Wine Retailers of America's intention to file this brief more than 10 days before it was due, and all parties have consented to its filing.

to the wines available by direct shipment from specialty retailers across the country.

INTRODUCTION AND SUMMARY OF ARGUMENT

As this Court observed in *Granholm v. Heald*, 544 U.S. 460, 467 (2005), the direct shipment of wine to consumers from out-of-state sources has grown rapidly in recent years. The reasons for this, the Court noted, include the dramatic increase in the number of small wineries in this country,[2] coupled with an equally pronounced consolidation of liquor wholesalers. *See id.* Because of these twin developments, many wines are produced in insufficient quantities, or lack sufficient consumer demand, to attract wholesaler representation. *See id.*

The predictable result has been that many of the nation's wines are unavailable in local brick-and-mortar wine stores. Sellers have therefore turned to the Internet, offering remote purchase and direct shipment options to consumers who cannot purchase a desired label locally. As the Federal Trade Commission has stated, in a study relied on by the *Granholm* Court, consumers can "reap significant benefits" when given "the option of purchasing wine online from out-of-state sources and having it shipped directly to them" – benefits including a far

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[2] Overall wine production has increased considerably in recent years; in California alone, the total retail value of wine produced went from $12 billion in 1998 to $17.9 billion in 2009. *See* Wine Institute, 2009 Wine Sales, available at http://www.wineinstitute.org/resources/statistics/article122 (last visited on December 16, 2010).

greater selection of wines, and lower prices resulting from competition. Federal Trade Commission, *Possible Anticompetitive Barriers to E-Commerce: Wine* 7 (July 2003), available at http://www.ftc.gov/os/2003/07/winereport2.pdf (last visited on December 18, 2010) ("FTC Report"), cited in *Granholm*, 544 U.S. at 467.

Significantly, in highlighting the importance of the rise of the direct shipment from out-of-state "sources" (or "suppliers"), the FTC Report did not distinguish between wine *producers* that offer direct shipment and wine *retailers* that do the same thing. And this for two very good reasons. First, there is the obvious, and too-often overlooked, fact that producers *are acting as retailers* when they sell directly to consumers. For example, when a California winery sells and ships wine to a consumer, it does so not under its producer's license, but under its license as a retailer in California.

Second, and less well known but no less important, is fact that specialty retailers *who do not produce wine* play a major role in the direct-shipment market, because not all wine producers do or can make their products available to consumers for direct shipment. In some instances, wineries make special limited-edition labels of their very finest stock, which they sell only to select wholesalers and do not make available directly to consumers; in other instances, they long ago sold out their stock of some older, perhaps especially sought-after, vintages, and so are unable to ship the wine in question to consumers.

Specialty retailers, such as *Amicus*, make it their business to fill this marketplace gap. Located

around the country, their expert buyers purchase rare or sought-after foreign and American labels and vintages from their own states' wholesalers, and often stock hundreds or thousands of difficult-to-find varieties. Then, to the extent allowed by law, they make these wines available on their websites for direct shipment to purchasers across the country who frequently cannot find the wines at local retailers – or, indeed, at retailers anywhere in their own state. In this way, the possibility of direct shipment from specialty retailers hugely increases the selection of wines available to consumers.

Often, the wines stocked by specialty retailers are very scarce, difficult and expensive to store properly, and by no means fungible from the consumer's point of view. For example, a rare 1985 Napa Valley Beaulieu Vineyards Georges de Latour Cabernet Sauvignon Reserve that is available from one such retailer is unlikely to be available from another; and a consumer intent on purchasing, say, a 1990 Napa Valley Harlan Estate, a much sought-after wine not sold to most wholesalers by the winery, may find only one or a handful of retailers anywhere in the United States positioned to sell it at any given time. The closest retailer with the desired product may be halfway across the country or more, making shipment by UPS or FedEx the only feasible way for the consumer to obtain the product. Thus, for specialty wine retailers and the oenophiles they serve, unfettered access to the national market is essential. To the extent that interstate access to wine retailers is restricted, many wines available in one state are made unavailable to consumers in other states.

Unfortunately, a number of states have erected protectionist barriers around their direct-shipping markets, enacting laws that permit in-state wine sources to ship directly to consumers in the state, while denying that same right to out-of-state sources. These discriminatory laws have generally taken two forms: laws that protect domestic *producers*, allowing in-state but not out-of-state wineries to ship their products directly to consumers; and laws, such as the Texas statutes at issue here, that protect domestic *merchants*, allowing in-state but not out-of-state retailers to ship directly to consumers.

The immediate concern of the *Granholm* decision was state laws of the first, producer-targeted type: at issue in that case were Michigan and New York laws that generally offered direct-shipment licenses to in-state wine-makers but not to out-of-state wine-makers. In its powerful opinion, the Court held that the states' powers under § 2 of the Twenty-First Amendment did not override other provisions of the Constitution, notably the Commerce Clause's prohibition on laws that discriminate against interstate trade. *Granholm*, 544 U.S. at 486. According to the Court, the challenged laws violated the fundamental precept that states "cannot deprive citizens of their right to have access to the markets of other States on equal terms" and "may not enact laws that burden out-of-state producers or shippers simply to give a competitive advantage to in-state businesses." *Id.* at 473, 472.

The present case concerns a discriminatory law of the second type, in which the state has

disadvantaged out-of-state *merchants* rather than producers of wine.[3] Under the Texas Alcoholic Beverages Code, in-state wine retailers are free to take orders "by mail, or by telegraph or telephone," and to directly ship the ordered products to consumers in their county, as well as to consumers outside the state. *See* Tex. Alco. Bev. Code §22.03(a), 24.03. In contrast, out-of-state retailers are expressly prohibited from selling or shipping wine to Texas consumers: anyone (other than a licensed winery) who "sells and ships alcohol from outside Texas to an ultimate consumer in Texas" commits a punishable offense. Tex. Alco. Bev. Code § 54.12. Thus, under Texas law, *in-state* retailers are allowed to remotely sell and ship wine to Texas residents, as well as to out-of-state purchasers. But *out-of-state* retailers are barred from selling and shipping to Texas residents. That is to say, Texas allows *its own* retailers to participate in the nation's market for remote sale and shipment, while at the same time keeping *other states'* retailers from reaching Texas consumers.

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[3] The Texas laws at issue in this case are remnants of a systematic pattern of alcohol regulations discriminating against out-of-state businesses, most of which have been struck down and are not now before this Court. These include laws banning direct durational residency and citizenship requirements for retailers and wholesalers (struck down, respectively, in *Cooper v. McBeath*, 11 F.3d 547 (5th Cir. 1994), and *Southern Wine & Spirits of Tex., Inc. v. Steen*, 486 F. Supp.2d 626 (W.D. Tex. 2007), as well as a law allowing direct shipment by in-state, but not out-of-state, wineries (struck down *Dickerson v. Bailey*, 336 F.3d 388, 409 (5th Cir. 2003)).

The impact of such discriminatory treatment should not be underestimated. As the District Court below observed, millions of people reside in Harris County, Texas, whose population exceeds that of 24 states. *See* District Court opinion, reproduced in Appendix to Petition for Certiorari ("App.") at 83a (citing U.S. Census Bureau, 2006 Population Estimates, http://www.census.gov). Under Texas law, a retailer located in that county would be able to take remote orders and make direct shipments throughout that sizeable market, while out-of-state retailers are completely barred from doing the same thing.[4]

The *Granholm* Court, having before it only the issue of direct shipment by *wineries*, had no occasion to address the constitutionality of discriminatory laws concerning direct shipment by retailers. Yet *Granholm*'s sweeping, unambiguous language condemning laws that "burden out-of-state producers *or shippers*," 544 U.S. at 472 (emphasis added), leaves little doubt as to how the Court would have viewed a law like the Texas code provision under review, which facially discriminates against out-of state shippers. As *Granholm* explained, "[s]tate laws that discriminate against interstate commerce face a virtually *per se* rule of invalidity," 544 U.S. at 476

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[4] It is of no constitutional import that direct-shipping permits available to Texas retailers are granted on a county-by-county rather than a state-wide basis. *See C&A Carbone, Inc., v. Clarkstown*, 511 U.S. 383, 391 (1994). The crucial fact is that only in-state retailers are given access to the state's direct-shipping market. However, the size of the Harris County market is an indicator of the competitive advantage the state gives its own retailers.

(internal quotation omitted); this is a rule that applies to the trade in alcoholic beverages as much as for any other article of commerce. *See id.* at 486-88 (reviewing decisions to this effect); *id.* at 488 (quoting separate opinion of SCALIA, J. in *Healy v. Beer Institute*, 491 U.S. 324 (1989)) (a "statute's invalidity is fully established by its facial discrimination against interstate commerce.... This is so despite the fact that the law regulates the sale of alcoholic beverages, since its discriminatory character eliminates the immunity afforded by the Twenty-First Amendment").

Astonishingly, however, the Fifth Circuit in its ruling below read the *Granholm* opinion as *endorsing* discrimination of the type found in the Texas statute. Seizing on language in *Granholm* generally approving of three-tier distribution systems that treat wine *producers* evenhandedly, the Fifth Circuit reached the extraordinary conclusion that Texas is therefore free to discriminate against out-of-state *retailers*.[5] Contrary to this Court's "virtually *per se* rule of invalidity" for state laws that

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[5] In so ruling, the Fifth Circuit followed a recent Second Circuit decision also upholding a law granting remote-sale and direct-shipment licenses to in-state, but not out-of-state, retailers. *See Arnold's Wines, Inc. v. Boyle*, 571 F.3d 185, 190-91 (2nd Cir. 2009) (holding challenge to the law "directly foreclosed by the *Granholm* Court's express affirmation of the legality of the three-tier system"). The opposite conclusion was reached by the district court in a challenge to an essentially identical Michigan law. *See Siesta Village Market, LLC v. Granholm*, 595 F.Supp. 1035, 1039 (E.D. Mich. 2008) ("While the [*Granholm*] court did make clear that the three-tiered system was an appropriate use of state power, it did not approve of a system that discriminates against out-of-state interests.")

discriminate against out-of-state commerce, the Fifth Circuit has effectively created a "*per se* rule of validity" for laws that facially discriminate against nonresident wine retailers.

The Fifth Circuit's ruling creates a looking-glass world in which, despite the clear teachings of this Court, the Twenty-First Amendment trumps the Commerce Clause; facially discriminatory laws against out-of-state shippers are valid regardless of whether they serve legitimate interests that cannot be achieved by less discriminatory means; in-state retailers, but not out-of-state retailers, may participate in the state's direct-shipping retail market. This Court should end the doctrinal confusion created by the Fifth Circuit's erroneous standard, and should make clear that *Granholm*'s central holding applies to wine retailers as well as producers: "If a State chooses to allow direct shipment of wine, it must do so on evenhanded terms," 544 U.S. at 493.

REASONS FOR GRANTING THE PETITION

The Fifth Circuit's Refusal to Apply Commerce Clause Scrutiny to Laws Discriminating Against Out-of-State Retailer Wine Shipping Contravenes this Court's Ruling in *Granholm*.

As the District Court below correctly held, the Texas provisions under review "plainly discriminate against interstate commerce," and therefore must be struck down unless they "advance a 'legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives.'" App. 81a, 87a (quoting *Granholm*, 544 U.S. at 489). The

District Court found that the State's proffered rationales for barring out-of-state shipments by retailers – namely, making on-site inspections, discouraging underage drinking, and collecting taxes – were unsubstantiated, just as this Court had found them unsubstantiated as applied to winery shipments in *Granholm*. App. 87a-90a. The District Court could not find, as required by *Granholm*, "'concrete record evidence'" that the "'State's nondiscriminatory alternatives will prove unworkable.'" App. 87a (quoting *Granholm*, 544 U.S. at 492-93).

Yet the Fifth Circuit held that the Texas laws require no such justification – that they "do not need to be saved," in the court's words, by proof of a legitimate purpose and the absence of nondiscriminatory alternatives. App. 36a. *Granholm*'s antidiscrimination rule, the Fifth Circuit reasoned, is limited to laws that burden out-of-state *producers* of wine, that is, erect trade barriers against *products* made out of state. Where other out-of-state wine *sellers* are concerned, in contrast, the rule does not apply. *See id.* at 36a (*Granholm* "concerned wineries, *i.e.*, the producers of the product traveling in commerce," and does not apply to "wholesalers and retailers, [which] are often required by a State's law to be within that State."). In the Fifth Circuit's view, out-of-state alcohol *retailers* can claim no Commerce Clause protection from discriminatory treatment; the standard of review this Court applied in *Granholm* – which, as the Court made clear, is the same standard employed to

any law discriminating against interstate commerce[6] – apparently has no application here.

Indeed, the Fifth Circuit reached the startling conclusion, that *Granholm* is actually *authority* for sustaining the Texas ban on out-of-state retail shipping. *See* App. 49a ("In effect, *Granholm* worked out the answer" that the ban is constitutional.) This, according to the Fifth Circuit, is because Texas uses a three-tier system of alcohol distribution, a structure *Granholm* declared "legitimate under the Twenty-First Amendment." App. 49a. Because – in the Fifth Circuit's view – discrimination against out-of-state retailers is "inherent in the three-tier system itself," App. 44a, there can be no Commerce Clause objection to a ban on out-of-state retail shipping, even if the state permits remote sales and direct shipments by in-state retailers.

Virtually every step in the Fifth Circuit's analysis is contradicted by *Granholm* and other decisions of this Court. First, to the extent the Fifth Circuit suggests that the Commerce Clause's antidiscrimination rule applies only to out-of-state alcohol *producers* but not *merchants*, that proposition is squarely foreclosed by this Court's Commerce Clause jurisprudence. The Commerce Clause prohibits discrimination against interstate *commerce*, not just against out-of-state goods or producers. Laws that are "discriminatory in favor of the local merchant" further the "economic Balkanization that our dormant Commerce Clause jurisprudence has long sought to prevent." *Fulton*

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[6] *See Granholm*, 544 U.S. 489 (citing *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 278 (1988)).

Corp. v. Faulkner, 516 U.S. 325, 333 n.3 (1996) (citations and internal quotation marks omitted). Thus, for example, the Court has long held that states may not discriminate against out-of-state retailers, regardless of whether the goods they sell are available from local retailers. *See, e.g.*, *Best & Co., Inc., v. Maxwell*, 311 U.S. 454, 456 (1940) (striking down a tax "required of out-of-state retailers but not of their real local competitors, [which] can operate only to discourage and hinder the appearance of interstate commerce").

This rule applies with equal force to merchants of alcohol. For example, in *Healy v. Beer Institute*, 491 U.S. 324 (1989), a case relied on by *Granholm*, the Court struck down state law that required out-of-state beer dealers to affirm that the prices they charged in Connecticut were no higher than what they charged in neighboring states.[7] *See Healy*, 491 U.S. at 340; *Granholm*, 544 U.S. at 488 (citing *Healy*). The Connecticut statute had nothing to do with discrimination between in-state and out-of-state producers, as there *were* no in-state brewers; it was not *products* that were being treated differently, but their sellers. *See Healy*, 491 U.S. at 326 n.2. The discrimination was between purely in-state dealers, who could charge whatever price they chose, and dealers who also sold out-of-state, who were subject to price restrictions. This was enough for the Court to strike down the statute. *See id.* at 340. The Fifth Circuit's notion that the Commerce Clause's antidiscrimination rule applies to out-of-state

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[7] The dealers in question were not retailers, but importers and brewers.

wineries but not other out-of-state wine merchants has no basis in this Court's cases.

Second, by reading *Granholm*'s approval of three-tier distribution systems as an unqualified license to discriminate against out-of-state retailers, the Fifth Circuit has twisted this Court's decision beyond recognition. *Granholm* describes the three-tier system as "unquestionably legitimate." 544 U.S. at 489. Read in context, however, there is nothing in that passage, or anywhere in the opinion, suggesting that a given state's three-tier system, *no matter how operated*, is exempt from Commerce Clause scrutiny. On the contrary, we can infer from *Granholm*'s reliance on the *Healy* case that the Court meant to imply nothing of the kind. *Healy*, after all, was a successful challenge to a state's operation of its three-tier system: while not questioning Connecticut's three-tier structure itself, the Court exposed to Commerce Clause scrutiny the *operation* of the system, which imposed differential pricing obligations on in-state and out-of-state suppliers. *See Granholm*, 544 U.S. at 488 (declining "invitation" to "undermine" *Healy*).

To be sure, *Healy* involved discrimination against upper-tier suppliers rather than, in the Fifth Circuit's words, "third-tier retailing." App. 46a. In the Fifth Circuit's view, the in-state businesses favored by the law are just "[r]etailers ... acting as retailers and making what conceptually are local deliveries," rendering the law exempt from the standards normally applicable to discrimination against out-of-state sellers. App. 47a. But however the sales are viewed "conceptually," the fact is that the Texas law allows in-state businesses, but not out-

of-state businesses, to take remote orders and ship directly to consumers who may be miles away, just as was the case in *Granholm*. That the businesses are dubbed "retailers" is immaterial to the constitutional principle involved. Whether the target of a law discriminating against out-of-state shipping commerce is termed a producer, distributor, retailer, or something else, Commerce Clause scrutiny nonetheless applies.[8] The standard is familiar, but bears repeating: the state must come forward with proof that the law serves a legitimate purpose that cannot be achieved by less discriminatory alternatives. *Dept. of Revenue of Kentucky v. Davis*, 553 U.S. 328, 338 (2008) (citing cases); *Granholm*, 544 U.S. at 489.

The Fifth Circuit's view that the Texas law need not be "saved" under this standard – that the state's exclusion of out-of-state retailers from the direct shipping market carries no burden of justification at all – creates an exception to this Court's Commerce Clause jurisprudence, an exception of unknown provenance and uncertain contours, when the teaching of *Granholm* seems crystal clear: the state could have banned direct consumer shipping entirely, *i.e.*, insisted on face-to-face exchanges in all retail purchases of alcohol; but having chosen to allow in-state retailers to engage in remote sales and direct shipping to distant consumers, must either

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[8] *Cf. Ring v. Arizona*, 536 U.S. 584, 610 (2002)(Scalia, J., concurring)("all facts essential to the imposition of the level of punishment that the defendant receives – whether the statute calls them elements of the offense, sentencing factors, or Mary Jane – must be found by the jury beyond a reasonable doubt.")

allow out-of-state retailers to do the same, or come forward with concrete evidence justifying the discrimination.

Third, there is absolutely no foundation for the Fifth Circuit's claim that banning direct shipping by out-of-state retailers is "inherent" to the three-tier system "given constitutional approval" in *Granholm*. The reality is that maintaining a three-tier system is fully compatible with allowing remote sales and direct shipments by out-of-state retailers. Indeed, many states with three-tier systems have done just this, making direct shipper permits available to out-of-state retailers.[9] As with direct shipper permits for out-of-state wineries, these retailer permits require the holder to adhere to a variety of conditions, such as: (1) having authority to sell at retail in their home state; (2) paying taxes to the state to which the wine is being shipped; (3) limiting the quantity of wine sold and shipped to a given consumer per year; (4) ensuring that the carrier verifies that the recipient who signs for the shipment is of legal drinking age; (5) reporting all sales and shipments to state authorities; and (6) making its records available for inspection by state authorities.[10]

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[9] *See, e.g.*, Cal. Bus. & Prof. Code § 23661.2; Idaho Code § 23-1309A; La. Rev. Stat. § 26:359; Mo. Rev. Stat. § 311.462; Nev. Rev. Stat. § 369.490; N.H. Rev. Stat. § 178:27; N.M. Stat. § 60-7A-3; Or. Rev. Stat. § 471.282; Va. Code § 4.1-209.1; W. Va. Code § 60-8-6; Wyo. Stat. § 12-2-204.

[10] These requirements are found in all of the state laws cited in the previous footnote, and are also in the Model Direct Shipment Bill endorsed by the Task Force of the National Conference of State Legislatures, available at

Under these statutes, the three-tier system of the home state of the shipping retailer remains operative with respect to that retailer. Thus, for example, a California specialty retailer seeking to sell directly to Oregon consumers must buy from a licensed California wholesaler, and then comply with the terms direct shipping permit issued by Oregon. Likewise, an Oregon specialty retailer seeking to ship to California consumers must buy from an Oregon wholesaler, and then comply with California law regulating direct shipping.

In this way, the three-tier system of each state remains in full force, regulating exchanges between tiers within its own borders. A state that issues a direct shipper permit to an out-of-state retailer is able to rely on the three-tier system of the retailer's state, as well as on the terms of the permit, to police the shipper's sales. This scarcely spells the end of the three-tier system; rather, it represents the effective functioning of the three-tier system – operated and maintained in a cooperative manner among states in a national economy, in an evolving and thriving wine market in which face-to-face sales are increasingly giving way to electronic transactions and long-distance marketing. Texas, indeed, has recognized the vibrant changes in the market by allowing remote sales and direct shipping by its own retailers, as well as by wineries from in and out of

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http://www.wineinstitute.org/files/ModelDirectShipmentBill.pdf (last visited December 17, 2010).

state.[11] Now, contrary to the Fifth Circuit's ruling, Texas must explain why it cannot open its direct-shipping market to out-of-state retailers.

Discrimination in the granting of direct shipper licenses to *retailers* is no more necessary to further legitimate state purposes than is discrimination in the granting of direct shipper licenses to *wineries*. Certainly nothing in *Granholm* suggests the Court saw a difference. In fact, the Court referred with approval both to the Model Direct Shipping Bill and to the FTC Report on state law barriers to wine commerce, both of which endorsed allowing direct shipment by out-of-state *retailers* as well as *producers*, and saw neither as a threat to the integrity of the three-tier system. *See Granholm*, 544 U.S. at 466 (referring repeatedly to FTC Report); 544 U.S. 491-92 (referring to Model Direct Shipping Bill). The *Granholm* Court concluded that the various interests the states adduced to justify barring out-of-state winery shipments could be achieved by nondiscriminatory means, including the use of electronic monitoring, record-keeping, and communications technologies. *See* 544 U.S. at 492 ("These objectives [i.e., the interests invoked by the state] can also be achieved through the alternative of an evenhanded licensing requirement.... [I]mprovements in technology have eased the burden of monitoring out-of-state wineries.")(citing FTC Report at 40-41).

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[11] In the wake of *Granholm* and *Dickerson v. Bailey*, 336 F.3d 388 (5th Cir. 2003), Texas allows direct shipment by out-of-state wineries on the same terms as in-state wineries.

As with wineries, so with retailers: the state can achieve its objectives "through the alternative of an evenhanded licensing requirement." *Granholm*, 544 U.S. at 492. That is what the district court below found. It is almost certainly the conclusion the *Granholm* Court would have reached. Yet the Fifth Circuit thought it unnecessary even to consider questions. This Court should grant the writ so as to end Texas's parochial exclusion of out-of-state retailers from the burgeoning direct-shipment market for wine, and to ensure that the Commerce Clause and its principle of nondiscrimination are uniformly applied.

CONCLUSION

For the foregoing reasons, the Court should grant this petition for writ of certiorari.

Respectfully submitted,

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